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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
TTY (202) 225-6852

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May 5, 2000

BY FACSIMILE

The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Browner:

On Tuesday, May 2, 2000, our representatives attended a joint committee meeting of the Ozone Transport Commission (OTC). Among the proposals under consideration was a package of emission reduction measures submitted by the Northeast States for Coordinated Air Management (NESCAUM). NESCAUM's "Emission Reduction Measure #10" would establish electric power generation performance standards (GPS) for multiple air emissions, specifically nitrogen oxides (NOx), sulfur dioxide (SO₂), mercury, and carbon dioxide (CO₂). An OTC draft document distributed prior to the meeting states, "Standards for CO₂ reflect Kyoto targets."

We are concerned that OTC's consideration of a Kyoto Protocol implementation measure may conflict with the Knollenberg funding provision, section 184 of the Clean Air Act (CAA), the OTC's Bylaws, and the Environmental Protection Agency's (EPA's) repeated assurances that it has "no plans" to regulate CO₂.

Therefore, pursuant to the Constitution and Rules X and XI of the United States House of Representatives, we request that EPA address our concerns by answering the questions enumerated in the attachment. Please provide the requested information by Friday, May 26, 2000 to the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs majority and minority staffs in rooms B-377 and B-350A Rayburn House Office Building (RHOB), respectively, and to Representative Knollenberg's office in 2349 RHOB. If you have any questions about this request, please contact Subcommittee Staff Director Marlo Lewis at 225-1962.

Thank you in advance for your attention to this request.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs



Joe Knollenberg

Member of Congress

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

- Q1. Please list all grants or contracts awarded by the Environmental Protection Agency (EPA) to the Ozone Transport Commission (OTC) during Fiscal Years (FYs) 1996-2000. Please describe the purpose of each grant and contract, specify the amount of funding provided, and identify whether the grant or contract was competitively awarded. Finally, please provide copies of all EPA grants to or contracts with OTC during the period indicated, and copies of any OTC reports submitted to EPA under those awards.
- Q2. Please list all grants or contracts awarded by EPA to the Northeast States for Coordinated Air Management (NESCAUM) during FYs 1996-2000. Please describe the purpose of each grant and contract, specify the amount of funding provided, and identify whether the grant or contract was competitively awarded. Finally, please provide copies of all EPA grants to or contracts with NESCAUM during the period indicated, and copies of any NESCAUM reports submitted to EPA under those awards.
- Q3. What assistance -- financial or technical -- has EPA provided to OTC and/or NESCAUM for the purpose of developing generation performance standards (GPS) or environmental performance standards (EPS) for electric utilities? Please provide copies of all documents (including e-mails, letters, and memoranda) to and from EPA and OTC and/or NESCAUM addressing the subject of GPS or EPS for electric utilities.
- Q4. NESCAUM's proposal to establish a GPS for carbon dioxide (CO₂) is part of a "model rule" for the ozone transport region. An OTC draft document states that the "standard for CO₂ reflects the Kyoto targets." Since the Knollenberg provision prohibits EPA funds to be used to "*propose* or issue *rules*, regulations, decrees, or orders for the purpose of implementation, or in *preparation* for implementation, of the Kyoto Protocol" (emphasis added), and since OTC receives EPA funds, does EPA agree that the Knollenberg limitation prohibits OTC from adopting, promoting, or developing regulatory standards for CO₂ using EPA funds in whole or in part? If EPA does not agree, please explain why.
- Q5. Section 184 of the Clean Air Act (CAA) establishes a "transport region for ozone" and directs the Administrator to "convene a commission" that "may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart."

This statement defines the legitimate scope of OTC's activity rather narrowly. The CAA authorizes OTC to develop control measures only for ozone or its precursors -- volatile organic compounds (VOCs) and nitrogen oxides (NO_x) -- and only if OTC determines such measures are necessary to bring the region or areas within it into attainment with the national ambient air quality standards (NAAQS) for ozone or its precursors. Section 184 does not authorize OTC to develop recommendations for measures to control emissions of sulfur dioxide (SO₂), mercury, or carbon dioxide (CO₂). Does EPA agree with this reading of CAA section 184? If EPA does not agree, please explain why.

- Q6. OTC's Bylaws (Article III) state that OTC has three purposes: (1) assess the degree of "interstate transport of ozone or its precursors" throughout the transport region; (2) assess strategies "for mitigating *the* interstate pollution" [i.e., from ozone or its precursors] (emphasis added); and (3) recommend to the Administrator such measures as OTC determines are necessary to ensure member States "meet the requirements [on interstate pollution] of Section 110(a)(2)(d) of the Act." Nothing in the foregoing appears to suggest that OTC's purposes extend to environmental issues other than interstate pollution from the transport of ozone or its precursors. The Bylaws surely do not suggest that OTC may propose measures to control substances, such as CO₂, which are not regulated under section 110 of the CAA. Does EPA agree with this reading of OTC's Bylaws? If EPA does not agree, please explain why.
- Q7. Whether or not global warming from industrial emissions of CO₂ is a real and serious problem, CO₂ is neither an ozone precursor nor a substance that has environmental impacts due to its "transport" from one area to another. From the standpoint of global warming theory, it makes no difference whether a ton of CO₂ is generated in California or in Calcutta, nor whether people live near or far from a CO₂ emission source. What matters is average global atmospheric concentrations, not the local or regional distribution of CO₂ via local or regional wind patterns. Thus, even if Congress were to authorize EPA to regulate CO₂, it would make no sense to establish a "CO₂ transport region." Since CO₂ is neither an ozone issue nor a transport issue, does EPA agree that proposals to control CO₂ emissions are beyond OTC's proper subject matter and purview? If EPA does not agree, please explain why.
- Q8. On numerous occasions, EPA has stated that it has "no plans" to regulate CO₂. Indeed, according to EPA General Counsel Gary S. Guzy, EPA has not even begun a formal review to determine whether CO₂ meets any of the criteria for regulation under any provisions of the CAA. Since EPA has no plans to regulate CO₂ and has not determined that CO₂ meets any criteria for regulation under the CAA, would it be improper for EPA to provide OTC financial or technical assistance for the purpose of developing regulatory standards for CO₂?